

1 PHILIP M. JAY, DISTRICT COUNSEL #086174  
2 CATHERINE TOGNAZZINI, Ass't District Counsel #226957  
3 SAN JOAQUIN VALLEY UNIFIED AIR  
4 POLLUTION CONTROL DISTRICT  
1990 E. Gettysburg  
Fresno, California 93726  
Telephone: (559) 230-6033 / Facsimile: (559) 230-6061

## 5 | Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**FRESNO DIVISION**

12 LATINO ISSUES FORUM, MEDICAL )  
13 ADVOCATES FOR HEALTHY ) Case No.  
14 AIR, and SIERRA CLUB, )  
15 Plaintiffs, )  
16 v. ) CONSENT DECREE  
17 SAN JOAQUIN VALLEY UNIFIED AIR )  
18 POLLUTION CONTROL DISTRICT, )  
19 Defendant. )

WHEREAS, on January 20, 2005, plaintiffs Latino Issues Forum, Medical Advocates for Healthy Air, and Sierra Club served on defendant San Joaquin Valley Unified Air Pollution Control District a notice of intent to file a federal Clean Air Act citizen suit pursuant to 42 U.S.C. § 7604(b) (“60-day notice”) listing seven rules contained in defendant’s federally approved *2003 San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller* (“PM-10 Plan”). A true and correct copy of said 60-day notice is attached hereto and incorporated herein as Exhibit 1;

27 WHEREAS, since the serving of said 60-day notice, defendant has adopted two of the  
28 rules listed as overdue;

1           WHEREAS, plaintiffs filed a complaint in this matter on May 5, 2005 against defendant;

2           WHEREAS, in their complaint, plaintiffs allege that defendant violated the Clean Air Act,  
3 42 U.S.C. §§ 7401 *et seq.*, including 42 U.S.C § 7604(a) & (g), by failing to adopt four specific  
4 pollution control rules by the dates contained in its federally-approved PM-10 Plan;

5           WHEREAS, plaintiffs and defendant (“parties”) agree that this Court has jurisdiction to  
6 enter this Consent Decree, and have agreed to enter into this Consent Decree without any  
7 admission or adjudication of any issue of fact, law, liability, or remedy;

8           WHEREAS, it is in the interest of the parties, the public, and judicial economy to resolve  
9 these claims without further litigation;

10          WHEREAS, plaintiffs have agreed to enter into this Consent Decree in order to achieve  
11 the emissions reductions associated with four specific pollution control rules without the delay  
12 associated with litigating these claims, and remained concerned about the future implementation  
13 of the PM-10 Plan; and

14          WHEREAS, the Court finds and determines that this settlement represents a just, fair,  
15 adequate and equitable resolution of the claims resolved herein:

16          NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that:

17          1.       No later than December 31, 2005, defendant shall adopt in final form District Rule  
18 4307, or an equivalent measure, to reduce oxides of nitrogen (“NOx”) from small boilers, steam  
19 generators, and process heaters as required by District’s 2003 PM-10 Plan. The rule shall both  
20 become effective and be submitted by defendant to the California Air Resources Board (“CARB”)  
21 for review and submission to the U.S. Environmental Protection Agency (“EPA”) as a revision to  
22 the California State Implementation Plan (“SIP”) no later than January 31, 2006.

23          2.       No later than December 31, 2005, defendant shall adopt in final form District Rule  
24 4309, or an equivalent measure, to reduce NOx from commercial dryers as required by District’s  
25 2003 PM-10 Plan. The rule shall both become effective and be submitted by defendant to CARB  
26 for review and submission to EPA as a revision to the SIP no later than January 31, 2006.

27          3.       No later than December 31, 2005, defendant shall adopt in final form District Rule  
28 4903, or an equivalent measure, to reduce NOx from residential space heaters as required by

1 District's 2003 PM-10 Plan. The rule shall both become effective and be submitted by defendant  
2 to CARB for review and submission to EPA as a revision to the SIP no later than January 31,  
3 2006.

4       4. No later than December 31, 2005, defendant shall adopt in final form a District  
5 Rule (yet to be numbered), or an equivalent measure, to reduce NOx from industrial, commercial,  
6 and institutional water heaters as required by District's 2003 PM-10 Plan. The rule shall both  
7 become effective and be submitted by defendant to CARB for review and submission to EPA as a  
8 revision to the SIP no later than January 31, 2006.

9       5. For purposes described in paragraphs 1 through 4 above, "equivalent measures"  
10 refers to new substitute rules, measures, or programs that achieve the same or greater reductions  
11 in pollutants.

12      6. The parties also agree that in the event plaintiffs file a Clean Air Act citizen suit  
13 regarding District's 2003 PM-10 Plan commitment to adopt Rule 9510, "Indirect Source  
14 Mitigation Program," plaintiffs will file a new 60-day notice under 42 U.S.C. § 7604(b).

15      7. Any provision of this Consent Decree may be modified by the Court upon the  
16 motion of any party to this Consent Decree and consideration of any response by a non-moving  
17 party if the party seeking modification demonstrates that such modification is consistent with law  
18 and in the public interest, or if all parties agree to the modification.

19      8. Nothing in this Consent Decree shall be construed to bind the United States in any  
20 manner.

21      9. All submissions that this Consent Decree requires the defendant to make to CARB  
22 shall be submitted contemporaneously to the undersigned counsel for plaintiffs.

23      10. Plaintiffs' claims shall be dismissed with prejudice and this Consent Decree shall  
24 terminate when defendant has executed its obligations under Paragraphs 1-4, and plaintiffs have  
25 received a check resolving their claim for costs and attorneys fees pursuant to Paragraph 11.  
26 Within 30 days of the last of these events, plaintiffs shall file with the Court a motion to dismiss  
27 their complaint with prejudice. If plaintiffs fail to do so, defendant may file such a motion and,  
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1 absent any dispute over the completion of defendant's obligations, plaintiffs shall not oppose the  
2 dismissal of this action with prejudice.

3       11. Pursuant to section 304(d) of the Clean Air Act, 42 U.S.C. § 7604(d), defendant  
4 agrees to pay plaintiffs Thirty-five Thousand Eight Hundred Fifteen Dollars (\$35,815.00) as their  
5 costs of this litigation, including attorneys fees. This amount constitutes full satisfaction of any  
6 remaining claims for attorneys' fees and costs incurred by plaintiffs during the course of this  
7 litigation. Plaintiffs reserve the right to seek additional reasonable fees and costs, which plaintiffs  
8 may incur in enforcing this Consent Decree, should defendant fail to comply with the actions  
9 required herein. No later than thirty days after entry of this Consent Decree, defendant shall mail  
10 a check payable to Earthjustice in the amount of Thirty-five Thousand Eight Hundred Fifteen  
11 Dollars (\$35,815.00) to Earthjustice, c/o Deborah Reames, 426 17<sup>th</sup> Street, Fifth Floor, Oakland,  
12 California 94612.

13       12. Plaintiffs reserve all rights and remedies, which may pertain to defendant's failure  
14 to comply with any of the requirements of this Consent Decree. Plaintiffs reserve the right to  
15 contest any action the EPA may take (or not take) when it reviews the rules that defendant is  
16 obligated to submit to CARB under this Consent Decree for incorporation into the SIP. Except  
17 as provided expressly herein, nothing in this Consent Decree shall constitute a release or waiver of  
18 any claim plaintiffs may have against the defendant relating to compliance with the Clean Air Act.

19       13. The parties agree and acknowledge that before this Consent Decree can be  
20 finalized and entered by the Court, plaintiffs shall submit this Consent Decree, once lodged with  
21 the Court, to the Attorney General and the EPA Administrator for a 45-day review period  
22 pursuant to 42 U.S.C. § 7604(c). The parties reserve the right to withdraw their consent to entry  
23 of this Consent Decree if the United States notifies this Court in writing that it opposes entry of  
24 this Consent Decree. The parties agree not to oppose entry of this Consent Decree or to  
25 challenge any provision of this Consent Decree unless the United States notifies the Court in  
26 writing that it opposes entry of this Consent Decree.

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1           14. The undersigned representatives of each party certify that they are fully authorized  
2 by the party or parties they represent to consent to the Court's entry of the terms and conditions  
3 of this Decree, subject to the provisions in Paragraph 13.

5 IT IS SO ORDERED this 1<sup>st</sup> day of July 2005.

/s/ OLIVER W. WANGER

UNITED STATES DISTRICT COURT JUDGE

1 FOR THE PLAINTIFFS:

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3 Dated: May 5, 2005

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5 /s/ George M. Torgun

6 DEBORAH S. REAMES

7 GEORGE M. TORGUN

8 Attorneys for plaintiffs Latino Issues Forum, Medical  
9 Advocates for Healthy Air, and Sierra Club

10 FOR THE DEFENDANT:

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12 Dated: May 5, 2005

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14 /s/ Philip M. Jay (as authorized on May 4, 2005)

15 PHILIP M. JAY

16 District Counsel for the San Joaquin Valley Unified Air  
17 Pollution Control District

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